IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Giriraj. Versus State of Rajasthan & Anr.

S.B. Criminal Revision No. 581/2005 against the Order dated 23-9-2004 passed by the Additional Sessions Judge No.1, Chittorgarh, in Criminal Appeal No.39/2004 (21/2004) (40/2003).

...

Date of Order: July 07, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Umesh Shrimali, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal revision under Section 397/401 Cr.P.C., the petitioner has assailed the judgment dated 23.9.2004 passed by the Additional Sessions Judge No.1, Chittorgarh (for short, "the Appellate Court" hereinafter) in Criminal Appeal No.39/2004 (21/2004) (40/2003), whereby the appeal filed by the petitioner against the judgment and order dated 23-1-2001 passed by the Judicial Magistrate, Rawatbhata (for short, "the trial Court" hereinafter) in Criminal Case No. 134/1996, was partly allowed and while maintaining the conviction of the petitioner for the offences under Sections 497 and 498 IPC, the sentence of imprisonment was reduced to the

period of imprisonment already undergone by him. Aggrieved by the judgment and order impugned, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that there is delay in lodging the FIR. He further contended that some of the witnesses named in the FIR have not been produced. Lastly, it was contended that some of the prosecution witnesses, who were not named in the FIR and produced by the prosecution, have not been relied by the court below.

I have given my thoughtful consideration to the contentions raised by the learned counsel for the petitioner. Carefully gone through the judgments and orders passed by the trial Court and the Appellate Court.

The complainant and one Pawan Kumar were named as the eye witnesses in the FIR. From the statement of the complainant, his presence on the scene of the occurrence cannot be doubted and the offences against the petitioner have been established. Both the Courts below concurrently found the petitioner guilty of the offences noticed above. Merely because some of the witnesses named in the FIR were not produced by the prosecution, it cannot be a ground to discard the whole prosecution case. I am fortified with my view from a decision of

the Hon'ble Supreme Court in Birendra Rai & ors. Vs. Stateof Bihar, (2005) 9 SCC 719, held that mere failure to examine all the witnesses who may have witnessed the occurrence will not result in outright rejection of the prosecution case if the witnesses examined by the prosecution are found to be truthful and reliable. Nothing has been pointed out that any material evidence has not been considered either by the trial Court or by the Appellate Court. In the circumstances, therefore, the concurrent finding of the Courts below do not require any interference.

The revision petition is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs